

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

REX AARON SPRABARY

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Case No. 4:04cr162
(Judge Schell)

REPORT AND RECOMMENDATION **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on November 29, 2010, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Jay Johnson.

On August 16, 2005, Defendant was sentenced by the Honorable Richard A. Schell to forty-two (42) months' custody followed by three (3) years of supervised release for the offense of Felon in Possession of a Firearm. On November 16, 2007, Defendant completed his period of imprisonment and began service of his supervised term.

On November 1, 2010, the U.S. Pretrial Services Officer executed a Petition for Warrant for Offender Under Supervision. The petition alleged violation of the following mandatory condition: the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the Court. All remaining allegations were dismissed by the Government.

The petition alleges that Defendant committed the following acts with regard to violation of the mandatory condition: On December 11, 2009, February 1, 2010, April 5, 2010, and September

14, 2010, the defendant submitted urine specimens that tested positive for Methamphetamine.

Prior to the Government putting on its case, Defendant entered a plea of true to violation of the mandatory condition.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eleven (11) months with no supervised release to follow. It is also recommended that Defendant be housed in the Bureau of Prisons, Seagoville Unit.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 29th day of November, 2010.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE